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Independent BANKERS ASSOCIATION OF AMERICA
WASHINGTON OFFICE
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March 6, 1981

Mr. Randy Miller
Frauds Section
Department of Justice
315 9th Street, N.W.
Washington, D. C. 20350

Stephanie Heller
FRB
212-720-1530
~~All Fed~~
New York Federal Reserve

Dear Mr. Miller:

Enclosed please find a retyped copy
referred to in the correspondence of Th
president of this Association, with the
dated February 26, 1981. The enclosure
the Investment Company Institute on Jar
and hence, the confusion over its datir
understanding that the original of the
dated in December, 1979.

Please do not hesitate to call me i
you have any questions.

Sincerely,

Richard W. Peterson

Richard W. Peterson
Legislative Counsel

RWP:ks

Enclosure

Attachment I

RETYPED BY ICI 1/9/80
ORIGINAL ATTACHED

Mr. Martin Lybecker
Associate Director
Division of Marketing Management
Securities and Exchange Commission
500 North Capitol Street
Washington, D.C. 20549

Dear Mr. Lybecker:

By his letter of October 19, 1979 to the Attorney General, Mr. Morris D. Crawford, Jr., Chairman of the Board of the Bowery Savings Bank of New York furnished a copy of a letter from him of October 18, 1979, showing the Securities and Exchange Commissi among others as an addressee. That letter questioned the propriety in several aspects of money market fund operations, which are, as he notes, regulated principally under provisions of Federal law administered by the Commission. To assist the Commission in that regard and in its evaluation of the issues raised by Mr. Crawford, we are furnishing you herewith our views on Mr. Crawford's allegation that many money market funds violate section 21 of the Glass-Steagall Act, 48 Stat. 189 (12 U.S.C. 378(a)(1) as amended), by their provision of a mechanism that permits a fund investor to write an order to "redeem" (sell) so much of his investment as may be necessary upon presentation of the order to the fund's transfer agent (usually a bank) and for the agent to pay a specified sum to whomever presents the order. According to Mr. Crawford, such orders to sell and pay are generally referred to as checks. Enforcement of the cited statutory provision is a responsibility of the General Litigation and Legal Advice Section of the Criminal Division, Department of Justice.

Under the cited statutory provision, it would be unlawful for a money market fund "...to engage in the business of receivin deposits subject to check or to repayment upon presentation of a passbook, certificate of deposit, or other evidence of debt or upon request of the depositor...". Mr. Crawford predicates his allegation upon his conclusion that an investor's interest in a money market fund is a deposit, dismissing at page 6 of his October 18, 1979 letter as worthy only of parenthetical comment, the fact that the value in dollars of an investor's shares in a money market fund is subject to the "risk of market fluctuation...". We note that market fluctuation involves not only the risk of depreciation but also the opportunity for appreciatic at least for the serendipitous among the ingenuous investors of concern to Mr. Crawford.

It is patent from the quoted statutory language that a depositor is only a creditor of his depository (a debtor in the case of an authorized overdraft, which indebtedness he must liquidate by a "deposit"). It is equally patent that one who invests in a money market fund is an owner pro tanto of the fund

availability of particular mechanisms for an investor to transfer his ownership is a mere formality and serves in no way to alter the substance of his status as owner. As between him and the fund, the potential for capital gain or loss on his investment remains unaffected by the means he may select to realize his investment, and he is not, by his selection of the mechanism of a combined order to sell and pay over (check) to realize his investment, converted into a mere creditor of the fund with no expectation of capital gain or loss from the fund upon realization. Note, though not relevant to the issue at hand, one may question whether, being payable only from funds to be produced by liquidation of an investment, the instruments here concerned are unconditional orders such that, being drafts drawn on a bank, they are checks. See e.g. 23 I.C. Code 3-104 and 105.

Significantly, the statute here involved encompasses virtually any means a bank's creditor may employ to secure repayment of his deposit, viz: check, presentation of evidence of debt or mere request. Thus Mr. Crawford's argument proves too much. If funds invested in a money market fund are in fact deposits, then the statute is violated as much by liquidation of the investment and repayment on request of the investor as by the investor's use of a "check" for that purpose. This would mean that no pooling of resources by investors to buy and sell money market securities for their mutual advantage would be lawful, for the "...person, firm, corporation, association, business trust, or other similar organization..." for pooling investor resources (section 21, Glass-Steagall Act, supra) would necessarily engage in selling money market securities while at the same time receiving "deposits".

In light of the holding in Investment Co. Institute v. Camp, 401 U.S. 617 (1971) that section 16 of the Glass-Steagall Act, 12 U.S.C. 24, as amended, precludes engagement of a national bank in the investment banking business, the proviso in section 21 of the Glass-Steagall Act, supra, excluding from that prohibition bank security transactions permitted under section 16 of the Act, will not permit a bank to pool investors' resources for investment on their behalf in money market securities. The cited cases dealt specifically with a stock fund operation, but as the Court said, "...the breadth of the term (securities) is implicit in the fact that the antecedent statutory language (in sections 16 and 21 of the Glass-Steagall Act, supra) encompasses not only equity securities but also securities representing debt." Investment Co. Institute v. Camp, supra, at 635. The cited opinion makes it clear that the intent of Congress in passing the Glass-Steagall Act was to sever banks from investment banking, not to put an end to all investment banking business.

Reference to stock funds raises a further objection to Mr. Crawford's conclusion that investors in a money market fund are mere depositors. Surely the relationship between a fund and its investors cannot depend upon the character of the res held by the fund. It is probably true that a stock fund investment is generally more speculative than investment in a money market fund, but that distinction has no significance in assessment of the legal nature of the relationship between a fund and its investors. Note that the foregoing has not and need not involve consideration of permitted transactions of a bank for its own account in investment securities under section 16 of the Glass-Steagall Act, supra.

Inasmuch as investors in a money market fund are, in our view, owners of the fund and not mere depositors, we perceive no violation of section 21(a), Glass-Steagall Act, supra, in permitting an investor in such a fund to realize his investment by means of a check or otherwise. Please call Mr. James Robinson on 724-7526 should you wish to discuss aspects of the foregoing observations informally.

Sincerely,

Philip B. Heymann
Assistant Attorney General
Criminal Division

By:

Lawrence Lippe, Chief
General Litigation and
Legal Advice Section

FEDERAL RESERVE BANK OF NEW YORK
NEW YORK, N.Y. 10045-0001
AREA CODE 212-720-5000

DATE: April 21, 1997

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COMMENTS:

[redacted]

IF TRANSMISSION NOT COMPLETE, PLEASE CALL:

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